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**HOUSE BILL 600**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Terry T. Marquardt

**AN ACT**

**RELATING TO WATER; CHANGING PROCEDURES FOR MUNICIPALITIES TO  
CHANGE THE PLACE AND PURPOSE OF USE OF WATER RIGHTS FOR  
MUNICIPAL USE; PROVIDING FOR METHODS OF ACQUISITION OF WATER BY  
MUNICIPALITIES.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 72-5-23 NMSA 1978 (being Laws 1907,  
Chapter 49, Section 44, as amended) is amended to read:**

**"72-5-23. WATER APPURTENANT TO LAND--CHANGE OF PLACE OF  
USE.--All water used in this state for irrigation purposes,  
except as otherwise provided in this article, shall be  
considered appurtenant to the land upon which it is used, and  
the right to use it upon the land shall never be severed from  
the land without the consent of the owner of the land, but, by  
and with the consent of the owner of the land, all or any part**

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1 of the right may be severed from the land, simultaneously  
2 transferred and become appurtenant to other land, or may be  
3 transferred for other purposes, without losing priority of  
4 right theretofore established, if such changes can be made  
5 without detriment to existing water rights and are not contrary  
6 to conservation of water within the state and not detrimental  
7 to the public welfare of the state, on the approval of an  
8 application of the owner by the state engineer. Publication of  
9 notice of application, opportunity for the filing of objections  
10 or protests and a hearing on the application shall be provided  
11 as required by Sections 72-5-4 and 72-5-5 NMSA 1978, or in the  
12 case of a change to municipal use by a municipality, as  
13 provided in Section 72-5-24 NMSA 1978. "

14 Section 2. Section 72-5-24 NMSA 1978 (being Laws 1907,  
15 Chapter 49, Section 45, as amended) is amended to read:

16 "72-5-24. CHANGE OF PURPOSE--CHANGE OF POINT OF  
17 DIVERSION--CHANGE TO MUNICIPAL USE. --

18 A. An appropriator of water may, with the approval  
19 of the state engineer, use the same for other than the purpose  
20 for which it was appropriated or may change the place of  
21 diversion, storage or use in the manner and under the  
22 conditions prescribed in Sections 72-5-3 and 72-5-23 NMSA 1978.

23 B. A municipality may change the place or purpose  
24 of use or point of diversion of an existing water right  
25 pursuant to the following requirements:

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1                   (1) the municipality submits all information  
2 required by the state engineer in its application and, before  
3 issuing a permit approving the change, the state engineer:

4                   (a) determines the change will not  
5 impair existing water rights, be contrary to conservation of  
6 water within the state or be detrimental to the public welfare  
7 of the state; or

8                   (b) places conditions or limits on the  
9 permit that ensure that any change allowed will not impair  
10 existing water rights, be contrary to conservation of water  
11 within the state or be detrimental to the public welfare of the  
12 state;

13                   (2) upon state engineer approval of the  
14 application the municipality shall publish notice, in a form  
15 and in a newspaper prescribed by the state engineer, in some  
16 newspaper that is published and distributed in each county  
17 affected by the change and in each county where the water will  
18 be or has been put to beneficial use, or if there is no such  
19 newspaper, then in some newspaper of general circulation in the  
20 stream system, once a week for three consecutive weeks. The  
21 notice shall contain a description of the application and terms  
22 of the permit;

23                   (3) within ten days of the final publication  
24 of notice, a person, firm or corporation or other entity  
25 objecting that the permitted change will impair the objector's

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1 water right shall have standing to file objections or protests,  
2 and a person, firm or corporation or other entity objecting  
3 that the permitted change will be contrary to the conservation  
4 of water within the state or detrimental to the public welfare  
5 of the state and showing that the objector will be  
6 substantially and specifically affected by the granting of the  
7 application shall have standing to file objections or protests  
8 with the state engineer; provided, however, that the state of  
9 New Mexico or any of its branches, agencies, departments,  
10 boards, instrumentalities or institutions, and all political  
11 subdivisions of the state and their agencies, instrumentalities  
12 and institutions, shall have standing to file objections or  
13 protests;

14 (4) if the protestant shows that the permitted  
15 change will impair the protestant's water right, or shows that  
16 it will be contrary to the conservation of water within the  
17 state or detrimental to the public welfare of the state and  
18 that the protestant will be substantially and specifically  
19 affected by the permitted change, the state engineer shall  
20 modify the permit to address the protestant's objection; and

21 (5) the municipality shall comply with all  
22 conditions of the permit before it puts the water to beneficial  
23 use."

24 Section 3. Section 72-12-7 NMSA 1978 (being Laws 1931,  
25 Chapter 131, Section 7, as amended) is amended to read:

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1 "72-12-7. CHANGE OF LOCATION OF WELL--CHANGE IN USE ON  
2 APPLICATION--TEMPORARY CHANGE. --

3 A. Except as provided in Subsection B of this  
4 section, the owner of a water right may change the location of  
5 his well or change the use of the water, but only upon  
6 application to the state engineer and upon showing that the  
7 change will not impair existing rights and will not be contrary  
8 to the conservation of water within the state and will not be  
9 detrimental to the public welfare of the state. The  
10 application may be granted only after such advertisement and  
11 hearing as are prescribed in the case of original applications.

12 B. A municipality may change the location of a well  
13 and place and purpose of use of the water in accordance with  
14 the provisions of Section 72-5-24 NMSA 1978.

15 [~~B.~~] C. When the owner of a water right applies for  
16 a temporary change of not to exceed one year for not more than  
17 three acre-feet of water to a different location or to a  
18 different use, or both, the state engineer shall make an  
19 investigation and, if the change does not permanently impair  
20 any vested rights of others, he shall enter an order  
21 authorizing the change. If he finds that the change sought  
22 might impair vested rights, he shall order advertisement and  
23 hearing as in other cases.

24 [~~C.~~] D. If objections or protests have been filed  
25 within the time prescribed in the notice or if the state

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1 engineer is of the opinion that the permit should not be  
2 issued, the state engineer may deny the application or, before  
3 he acts on the application, may order that a hearing be held.  
4 He shall notify the applicant of his action by certified mail  
5 sent to the address shown in the application. "

6 Section 4. A new section of Chapter 72 NMSA 1978 is  
7 enacted to read:

8 "[NEW MATERIAL] METHODS OF ACQUISITION BY MUNICIPALITIES--  
9 CONDEMNATION-- CONVEYANCES AUTHORIZED-- LAND FOR APPURTENANCES--  
10 PUBLIC AND PRIVATE USE-- COMPENSATION. --

11 A. Municipalities, within and without the municipal  
12 boundary, may:

13 (1) acquire, contract for or condemn:

14 (a) springs;

15 (b) wells;

16 (c) water rights;

17 (d) other water supplies; and

18 (e) right-of-way or other necessary

19 ownership for the acquisition of water facilities;

20 (2) acquire, maintain, contract for or condemn

21 for use as a municipal utility privately owned water facilities

22 used or to be used for the furnishing and supply of water to

23 the municipality or its inhabitants; and

24 (3) change the place of diversion of any water

25 to any place selected by the municipality in order to make the

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1 water available to the municipality.

2 B. For the purposes stated in Section 3-27-3 NMSA  
3 1978, a municipality may take water from any stream, gulch or  
4 spring. If the taking of the water materially interferes with  
5 or impairs the vested right of any person who resides on the  
6 creek, gulch or stream or does milling or manufacturing on the  
7 creek, gulch or stream, the municipality shall obtain the  
8 consent of the person with the vested right or acquire the  
9 vested right by condemnation and make full compensation or  
10 satisfaction for all damages occasioned to the person.

11 C. A person may lawfully convey to a municipality  
12 any water, water right and ditch right or any interest in any  
13 water, water right and ditch right held or claimed by the  
14 grantor. A change of use of the water, water right, place of  
15 diversion or purpose for which the water or water right was  
16 originally acquired by the grantor shall not invalidate the  
17 right of the municipality to use the water or water right.

18 D. Proceedings to obtain any condemnation  
19 authorized in this section shall be in the manner provided by  
20 law. "